

**ASSEMBLY BILL**

**No. 40**

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**Introduced by Assembly Member Allen**

August 29, 2011

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An act to amend Sections 23101 and 25128 of, to amend and repeal Section 25128.5 of, to amend and repeal Section 25136 of, to add Sections 6377, 25128.7, 25136.1, and 25136.2 to, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as introduced, Allen. Corporation taxes: sales: singles sales factor: sales tax exemption.

(1) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.

On and after January 1, 2012, this bill would exempt specified percentages of specified sales and use taxes imposed at a combined rate of 5% of the sale of, and the storage, use, or other consumption in this state, of tangible personal property, as defined, purchased for use by a qualified person, as defined, primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of tangible personal property; in research and development; to maintain, repair, measure, or test specified tangible personal property; and by a contractor for use in a construction contract with a qualified person, as specified.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these laws.

This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes.

(2) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit for taxable years beginning on or after January 1, 2009, in the amount of \$3,000 for each full-time employee hired by a qualified employer, until a cutoff date on which a maximum cumulative credit of \$400,000,000 has been reached for all taxable years. Those laws define “qualified employer” as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year.

This bill would, under both laws, for taxable years beginning on or after January 1, 2012, and before January 1, 2014, authorize a credit in the amount of \$4,000 for each full-time employee, as specified, and expand the definition of “qualified employer” to mean a taxpayer that employed 50 or fewer employees as of the last day of the preceding taxable year. This bill would also provide that the credit, under both laws, would be repealed as of December 31, 2014.

(3) The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to have that income apportioned in accordance with a single sales factor formula, except as provided, pursuant to an irrevocable annual election, as specified. That law also provides that sales of tangible and intangible personal property are in this state in accordance with specified criteria.

This bill would, for taxable years beginning or after January 1, 2012, revise the rules which determine whether a taxpayer is doing business within this state, revise the provisions which determine whether specific sales occur in this state, and require a taxpayer, except as provided, to apportion its income in accordance with a single sales factor.

(4) This bill would constitute a change in state statute that would result in a taxpayer paying a higher tax the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

(5) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

(6) This bill would take effect immediately as a tax levy.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6377 is added to the Revenue and  
2 Taxation Code, to read:  
3 6377. (a) (1) Except as provided in subdivision on (e), and  
4 after January 1, 2012, there are exempted from  $78\frac{3}{4}$  percent of  
5 the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 the  
6 gross receipts from the sale of, and the storage, use, or other  
7 consumption in this state of, any of the following:  
8 (A) Tangible personal property purchased for use by a qualified  
9 person to be used primarily in any stage of the manufacturing,  
10 processing, refining, fabricating, or recycling of tangible personal  
11 property, beginning at the point any raw materials are received by  
12 the qualified person and introduced into the process and ending at  
13 the point at which the manufacturing, processing, refining,

1 fabricating, or recycling has altered the property to its completed  
2 form, including packaging, if required.

3 (B) Tangible personal property purchased for use by a qualified  
4 person to be used primarily in research and development.

5 (C) Tangible personal property purchased for use by a qualified  
6 person to be used primarily to maintain, repair, measure, or test  
7 any property described in subparagraph (A) or (B).

8 (D) Tangible personal property purchased by a contractor for  
9 use in the performance of a construction contract for a qualified  
10 person that will use the tangible personal property as an integral  
11 part of the manufacturing, processing, refining, fabricating, or  
12 recycling process, or as a research or storage facility for use in  
13 connection with the manufacturing process.

14 (2) The exemption established by this section shall not apply  
15 to the gross receipts from the sale of, or the storage, use, or other  
16 consumption of any of the following:

17 (A) Tangible personal property that is used primarily in  
18 administration, general management, or marketing.

19 (B) Consumables with a useful life of less than one year.

20 (C) Furniture, inventory, equipment used in the extraction  
21 process, or equipment used to store finished products that have  
22 completed the manufacturing process.

23 (b) For purposes of this section:

24 (1) “Acquire” includes any gift, inheritance, transfer incident  
25 to divorce, or any other transfer, whether or not for consideration.

26 (2) “Fabricating” means to make, build, create, produce, or  
27 assemble components or property to work in a new or different  
28 manner.

29 (3) “Manufacturing” means the activity of converting or  
30 conditioning tangible personal property by changing the form,  
31 composition, quality, or character of the property for ultimate sale  
32 at retail or use in the manufacturing of a product to be ultimately  
33 sold at retail. Manufacturing includes any improvements to tangible  
34 personal property that result in a greater service life or greater  
35 functionality than that of the original property. Manufacturing  
36 includes the generation of electricity.

37 (4) “Primarily,” for the purpose of subdivision (a), means  
38 tangible personal property used 50 percent or more of the time in  
39 an activity described in subdivision (a).

1 (5) “Process” means the period beginning at the point at which  
2 any raw materials are received by the qualified person and  
3 introduced into the manufacturing, processing, refining, fabricating,  
4 or recycling activity of the qualified person and ending at the point  
5 at which the manufacturing, processing, refining, fabricating, or  
6 recycling activity of the qualified person has altered tangible  
7 personal property to its completed form, including packaging, if  
8 required. Raw materials shall be considered to have been  
9 introduced into the process when the raw materials are stored on  
10 the same premises where the qualified person’s manufacturing,  
11 processing, refining, fabricating, or recycling activity is conducted.  
12 Raw materials that are stored on premises other than where the  
13 qualified person’s manufacturing, processing, refining, fabricating,  
14 or recycling activity is conducted, shall not be considered to have  
15 been introduced into the manufacturing, processing, refining,  
16 fabricating, or recycling process.

17 (6) “Processing” means the physical application of the materials  
18 and labor necessary to modify or change the characteristics of  
19 property.

20 (7) “Qualified person” means a person that is either of the  
21 following:

22 (A) A new trade or business that is primarily engaged in those  
23 lines of business classified in Industry Groups 3111 to 3399,  
24 inclusive, Industry Group 5112, NAICS Industry 221119, or  
25 NAICS Industry 541711 of the North American Industry  
26 Classification System (NAICS) published by the United States  
27 Office of Management and Budget (OMB), 2007 edition. In  
28 determining whether a trade or business activity qualifies as a new  
29 trade or business, the following rules shall apply:

30 (i) In any case where a person purchases or otherwise acquires  
31 all or any portion of the assets of an existing trade or business  
32 (irrespective of the form of entity) that is doing business in this  
33 state (within the meaning of Chapter 2 (commencing with Section  
34 23101) of Part 11), the trade or business thereafter conducted by  
35 that person (or any related person) shall not be treated as a new  
36 business if the aggregate fair market value of the acquired assets  
37 (including, real, personal, tangible, and intangible property) used  
38 by that person (or any related person) in the conduct of his or her  
39 trade or business exceeds 20 percent of the aggregate fair market  
40 value of the total assets of the trade or business being conducted

1 by the person (or any related person). For purposes of this  
2 subparagraph only, the following rules shall apply:

3 (I) The determination of the relative fair market values of the  
4 acquired assets and the total assets shall be made as of the last day  
5 of the month following the quarterly period in which the person  
6 (or any related person) first uses any of the acquired trade or  
7 business assets in his or her business activity.

8 (II) Any acquired assets that constituted property described in  
9 Section 1221(a) of the Internal Revenue Code in the hands of the  
10 transferor shall not be treated as assets acquired from an existing  
11 trade or business, unless those assets also constitute property  
12 described in Section 1221(a) of the Internal Revenue Code in the  
13 hands of the acquiring person (or related person).

14 (ii) In any case where a person (or any related person) is engaged  
15 in one or more trade or business activities in this state, or has been  
16 engaged in one or more trade or business activities in this state  
17 within the preceding 36 months (prior trade or business activity),  
18 and thereafter commences an additional trade or business activity  
19 in this state, the additional trade or business activity shall only be  
20 treated as a new business if the additional trade or business activity  
21 is classified under a different Industry Group (4-digit) of the  
22 NAICS published by the United States OMB, 2007 edition, than  
23 are any of the person's (or any related person's) current or prior  
24 trade or business activities in this state.

25 (iii) In any case where a person, including all related persons,  
26 is engaged in trade or business activities wholly outside of this  
27 state and that person first commences doing business in this state  
28 (within the meaning of Chapter 2 (commencing with Section  
29 23101) of Part 11) on or after January 1, 2012, (other than by  
30 purchase or other acquisition described in clause (i)), the trade or  
31 business activity shall be treated as a new business.

32 (iv) In any case where the legal form under which a trade or  
33 business activity is being conducted is changed, the change in form  
34 shall be disregarded and the determination of whether the trade or  
35 business activity is a new business shall be made by treating the  
36 person as having purchased or otherwise acquired all or any portion  
37 of the assets of an existing trade or business under the rules of  
38 clause (i).

39 (B) A trade or business, other than a new trade or business  
40 described in subparagraph (A), that is primarily engaged in those

lines of business classified in Industry Groups 3111 to 3399, inclusive, Industry Group 5112, NAICS Industry 221119, or NAICS Industry 541711 of the NAICS published by the United States OMB, 2007 edition.

(8) “Qualified person” shall not include a person that is a member of a combined reporting group that is required to apportion its income pursuant to subdivision (b) of Section 25128 as that section read on January 1, 2011. For purposes of this paragraph, a person is a member of a combined reporting group if its tax liability or net income for purposes of Part 11 (commencing with Section 23001) is determined by a combined report pursuant to Section 25101 or 25110, or is an entity included in the combined report. For purposes of the preceding sentence, “member” has the same meaning as that term is defined in paragraph (10) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations as that paragraph read on January 1, 2011, and “combined reporting group” has the same meaning as that term is defined in paragraph (3) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations as that paragraph read on January 1, 2011.

(9) “Refining” means the process of converting a natural resource to an intermediate or finished product.

(10) “Related person” means any person that is related to another person under either Section 267 or 318 of the Internal Revenue Code.

(11) “Research and development” means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(12) “Tangible personal property” includes, but is not limited to, all of the following:

(A) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and

1 regardless of whether the machine or component parts are  
2 assembled by the taxpayer or another party.

3 (C) Property used in pollution control that meets or exceeds  
4 standards established by this state or any local or regional  
5 governmental agency within this state.

6 (D) Special purpose buildings and foundations used as an  
7 integral part of the manufacturing, processing, refining, or  
8 fabricating process, or that constitute a research or storage facility  
9 used during the manufacturing process. Buildings used solely for  
10 warehousing purposes after completion of the manufacturing  
11 process are not included.

12 (E) Property used in recycling.

13 (13) “Useful life” for tangible personal property that a qualified  
14 person treats as having a useful life of one or more years for state  
15 income or franchise tax purposes shall be deemed to have a useful  
16 life of one or more years for purposes of this section. Useful life  
17 for tangible personal property that a qualified person treats as  
18 having a useful life of less than one year for state income or  
19 franchise tax purposes shall be deemed to have a useful life of less  
20 than one year for purposes of this section.

21 (c) An exemption shall not be allowed under this section unless  
22 the purchaser furnishes the retailer with an exemption certificate,  
23 completed in accordance with any instructions or regulations as  
24 the board may prescribe, and the retailer subsequently furnishes  
25 the board with a copy of the exemption certificate. The exemption  
26 certificate shall contain the sales price of the tangible personal  
27 property, the sale of, or the storage, use, or other consumption of  
28 which is exempt pursuant to subdivision (a) and shall be furnished  
29 to the board upon request.

30 (d) Notwithstanding subdivision (a), the exemption established  
31 by this section shall not apply with respect to any tax levied by a  
32 county, city, or district pursuant to, or in accordance with, the  
33 Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5  
34 commencing with Section 4200) or the Transactions and Use  
35 Tax Law (Part 1.6 (commencing with Section 7251)).

36 (e) Notwithstanding subdivision (a), on and after January 1,  
37 2012, for a qualified person described in subparagraph (B) of  
38 paragraph (7) of subdivision (b), or for a contractor performing a  
39 construction contract as described in subparagraph (D) of paragraph  
40 (1) of subdivision (a), the exemption established by this section

1 shall apply only with respect to 60 percent of the tax levied by  
2 Sections 6051, 6051.3, 6201, and 6201.3.

3 (f) Notwithstanding subdivision (a), the exemption provided by  
4 this section shall not apply to any sale or use of property which,  
5 within one year from the date of purchase, is either removed from  
6 California or converted from an exempt use under subdivision (a)  
7 to some other use not qualifying for the exemption.

8 (g) If a purchaser certifies in writing to the seller that the  
9 property purchased without payment of the tax will be used in a  
10 manner entitling the seller to regard the gross receipts from the  
11 sale as exempt from the sales tax pursuant to this section, and  
12 within one year from the date of purchase, the purchaser (1)  
13 removes that property outside California, (2) converts that property  
14 for use in a manner not qualifying for the exemption, or (3) uses  
15 that property in a manner not qualifying for the exemption, the  
16 purchaser shall be liable for payment of sales tax, with applicable  
17 interest, as if the purchaser were a retailer making a retail sale of  
18 the property at the time the property is so removed, converted, or  
19 used, and the sales price of the property to the purchaser shall be  
20 deemed the gross receipts from that retail sale.

21 (h) The exemption established by this section shall apply to a  
22 lease of tangible personal property classified as a “continuing sale”  
23 or “continuing purchase” in accordance with Section 6006.1 or  
24 6010.1, and to the rentals payable pursuant to such a lease, provided  
25 the lessee is a qualified person and the tangible personal property  
26 is used in an activity described in subdivision (a).

27 (i) At the time necessary information technologies and electronic  
28 data warehousing capabilities of the board are sufficiently  
29 established, the board shall determine an efficient means by which  
30 qualified persons may electronically apply for, and receive, an  
31 exemption certificate that contains information that would assist  
32 retailers in complying with this part with respect to the exemption  
33 established by this section.

34 SEC. 2. Section 17053.80 of the Revenue and Taxation Code,  
35 as added by Section 3 of Chapter 10 of the Third Extraordinary  
36 Session of the Statutes of 2009, is repealed.

37 ~~17053.80.—(a) For each taxable year beginning on or after~~  
38 ~~January 1, 2009, there shall be allowed as a credit against the “net~~  
39 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~  
40 ~~for each net increase in qualified full-time employees, as specified~~

1 in subdivision (c), hired during the taxable year by a qualified  
2 employer.

3 (b) For purposes of this section:

4 (1) “Acquired” includes any gift, inheritance, transfer incident  
5 to divorce, or any other transfer, whether or not for consideration.

6 (2) “Qualified full-time employee” means:

7 (A) A qualified employee who was paid qualified wages by the  
8 qualified employer for services of not less than an average of 35  
9 hours per week.

10 (B) A qualified employee who was a salaried employee and  
11 was paid compensation during the taxable year for full-time  
12 employment, within the meaning of Section 515 of the Labor Code,  
13 by the qualified employer.

14 (3) A “qualified employee” shall not include any of the  
15 following:

16 (A) An employee certified as a qualified employee in an  
17 enterprise zone designated in accordance with Chapter 12.8  
18 (commencing with Section 7070) of Division 7 of Title 1 of the  
19 Government Code.

20 (B) An employee certified as a qualified disadvantaged  
21 individual in a manufacturing enhancement area designated in  
22 accordance with Section 7073.8 of the Government Code.

23 (C) An employee certified as a qualified employee in a targeted  
24 tax area designated in accordance with Section 7097 of the  
25 Government Code.

26 (D) An employee certified as a qualified disadvantaged  
27 individual or a qualified displaced employee in a local agency  
28 military base recovery area (LAMBRA) designated in accordance  
29 with Chapter 12.97 (commencing with Section 7105) of Division  
30 7 of Title 1 of the Government Code.

31 (E) An employee whose wages are included in calculating any  
32 other credit allowed under this part.

33 (4) “Qualified employer” means a taxpayer that, as of the last  
34 day of the preceding taxable year, employed a total of 20 or fewer  
35 employees.

36 (5) “Qualified wages” means wages subject to Division 6  
37 (commencing with Section 13000) of the Unemployment Insurance  
38 Code.

39 (6) “Annual full-time equivalent” means either of the following:

1     ~~(A) In the case of a full-time employee paid hourly qualified~~  
2 ~~wages, “annual full-time equivalent” means the total number of~~  
3 ~~hours worked for the taxpayer by the employee (not to exceed~~  
4 ~~2,000 hours per employee) divided by 2,000.~~

5     ~~(B) In the case of a salaried full-time employee, “annual~~  
6 ~~full-time equivalent” means the total number of weeks worked for~~  
7 ~~the taxpayer by the employee divided by 52.~~

8     ~~(c) The net increase in qualified full-time employees of a~~  
9 ~~qualified employer shall be determined as provided by this~~  
10 ~~subdivision:~~

11     ~~(1) (A) The net increase in qualified full-time employees shall~~  
12 ~~be determined on an annual full-time equivalent basis by~~  
13 ~~subtracting from the amount determined in subparagraph (C) the~~  
14 ~~amount determined in subparagraph (B):~~

15     ~~(B) The total number of qualified full-time employees employed~~  
16 ~~in the preceding taxable year by the taxpayer and by any trade or~~  
17 ~~business acquired by the taxpayer during the current taxable year.~~

18     ~~(C) The total number of full-time employees employed in the~~  
19 ~~current taxable year by the taxpayer and by any trade or business~~  
20 ~~acquired during the current taxable year.~~

21     ~~(2) For taxpayers who first commence doing business in this~~  
22 ~~state during the taxable year, the number of full-time employees~~  
23 ~~for the immediately preceding prior taxable year shall be zero.~~

24     ~~(d) In the case where the credit allowed by this section exceeds~~  
25 ~~the “net tax,” the excess may be carried over to reduce the “net~~  
26 ~~tax” in the following year, and succeeding seven years if necessary,~~  
27 ~~until the credit is exhausted.~~

28     ~~(e) Any deduction otherwise allowed under this part for qualified~~  
29 ~~wages shall not be reduced by the amount of the credit allowed~~  
30 ~~under this section.~~

31     ~~(f) For purposes of this section:~~

32     ~~(1) All employees of the trades or businesses that are treated as~~  
33 ~~related under either Section 267, 318, or 707 of the Internal~~  
34 ~~Revenue Code shall be treated as employed by a single taxpayer.~~

35     ~~(2) In determining whether the taxpayer has first commenced~~  
36 ~~doing business in this state during the taxable year, the provisions~~  
37 ~~of subdivision (f) of Section 17276, without application of~~  
38 ~~paragraph (7) of that subdivision, shall apply.~~

39     ~~(g) (1) (A) Credit under this section and Section 23623 shall~~  
40 ~~be allowed only for credits claimed on timely filed original returns~~

1 received by the Franchise Tax Board on or before the cut-off date  
2 established by the Franchise Tax Board.

3 (B) For purposes of this paragraph, the cut-off date shall be the  
4 last day of the calendar quarter within which the Franchise Tax  
5 Board estimates it will have received timely filed original returns  
6 claiming credits under this section and Section 23623 that  
7 cumulatively total four hundred million dollars (\$400,000,000)  
8 for all taxable years.

9 (2) The date a return is received shall be determined by the  
10 Franchise Tax Board.

11 (3) (A) The determinations of the Franchise Tax Board with  
12 respect to the cut-off date, the date a return is received, and whether  
13 a return has been timely filed for purposes of this subdivision may  
14 not be reviewed in any administrative or judicial proceeding

15 (B) Any disallowance of a credit claimed due to a determination  
16 under this subdivision, including the application of the limitation  
17 specified in paragraph (1), shall be treated as a mathematical error  
18 appearing on the return. Any amount of tax resulting from such  
19 disallowance may be assessed by the Franchise Tax Board in the  
20 same manner as provided by Section 19051.

21 (4) The Franchise Tax Board shall periodically provide notice  
22 on its Web site with respect to the amount of credit under this  
23 section and Section 23623 claimed on timely filed original returns  
24 received by the Franchise Tax Board.

25 (h) (1) The Franchise Tax Board may prescribe rules, guidelines  
26 or procedures necessary or appropriate to carry out the purposes  
27 of this section, including any guidelines regarding the limitation  
28 on total credits allowable under this section and Section 23623  
29 and guidelines necessary to avoid the application of paragraph (2)  
30 of subdivision (f) through split-ups, shell corporations, partnerships,  
31 tiered ownership structures, or otherwise.

32 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
33 Division 3 of Title 2 of the Government Code does not apply to  
34 any standard, criterion, procedure, determination, rule, notice, or  
35 guideline established or issued by the Franchise Tax Board  
36 pursuant to this section.

37 (i) This section shall remain in effect only until December 1 of  
38 the calendar year after the year of the cut-off date, and as of that  
39 December 1 is repealed.

SEC. 3. Section 17053.80 of the Revenue and Taxation Code, as added by Section 3 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:

17053.80. (a) ~~For each taxable year beginning on or after January 1, 2009, there~~ *There* shall be allowed as a credit against the “net tax,” as defined in Section 17039, ~~three thousand dollars (\$3,000)~~ *the amount specified in paragraph (1) or (2)* for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

*(1) For each taxable year beginning on or after January 1, 2009, and before January 1, 2012, the credit shall be equal to three thousand dollars (\$3,000).*

*(2) For each taxable year beginning on or after January 1, 2012, and before January 1, 2014, the credit shall be equal to four thousand dollars (\$4,000).*

(b) For purposes of this section:

(1) “Acquired” includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(2) “Qualified full-time employee” means:

(A) A qualified employee who was paid qualified wages *during the taxable year* by the qualified employer for services of not less than an average of 35 hours per week.

(B) A qualified employee who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified employer.

(3) A “qualified employee” shall not include any of the following:

(A) An employee certified as a qualified employee in an enterprise zone designated in accordance with Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(B) An employee certified as a qualified disadvantaged individual in a manufacturing enhancement area designated in accordance with Section 7073.8 of the Government Code.

(C) An employee certified as a qualified employee in a targeted tax area designated in accordance with Section 7097 of the Government Code.

(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance with Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code.

(E) An employee whose wages are included, in calculating any other credit allowed under this part.

(4) “Qualified employer” means ~~a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.~~

(A) *For taxable years beginning on or after January 1, 2009, and before January 1, 2012, a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.*

(B) *For taxable years beginning on or after January 1, 2012, and before January 1, 2014, a taxpayer that, as of the last day of the preceding taxable year, employed a total of 50 or fewer employees.*

(5) “Qualified wages” means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

(6) “Annual full-time equivalent” means either of the following:

(A) In the case of a full-time employee paid hourly qualified wages, “annual full-time equivalent” means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.

(B) In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the taxpayer by the employee divided by 52.

(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:

(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).

(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.

1 (C) The total number of full-time employees employed in the  
2 current taxable year by the taxpayer and by any trade or business  
3 acquired during the current taxable year.

4 (2) For taxpayers ~~who~~ *that* first commence doing business in  
5 this state during the taxable year, the number of full-time  
6 employees for the immediately preceding prior taxable year shall  
7 be zero.

8 (d) In the case where the credit allowed by this section exceeds  
9 the “net tax,” the excess may be carried over to reduce the “net  
10 tax” in the following year, and *the* succeeding seven years if  
11 necessary, until the credit is exhausted.

12 (e) Any deduction otherwise allowed under this part for qualified  
13 wages shall not be reduced by the amount of the credit allowed  
14 under this section.

15 (f) For purposes of this section:

16 (1) All employees of the trades or businesses that are treated as  
17 related under either Section 267, 318, or 707 of the Internal  
18 Revenue Code shall be treated as employed by a single taxpayer.

19 (2) In determining whether the taxpayer has first commenced  
20 doing business in this state during the taxable year, the provisions  
21 of subdivision (f) of Section ~~47276~~ 17276.20, without application  
22 of paragraph (7) of that subdivision, shall apply.

23 (g) (1) (A) Credit under this section and Section 23623 shall  
24 be allowed only for credits claimed on *a* timely filed original  
25 ~~returns~~ *return* received by the Franchise Tax Board on or before  
26 the cut-off date established by the Franchise Tax Board.

27 (B) For purposes of this paragraph, the cut-off date shall be the  
28 last day of the calendar quarter within which the Franchise Tax  
29 Board estimates it will have received timely filed original returns  
30 claiming credits under this section and Section 23623 that  
31 cumulatively total four hundred million dollars (\$400,000,000)  
32 for all taxable years.

33 (2) The date a return is received shall be determined by the  
34 Franchise Tax Board.

35 (3) (A) The determinations of the Franchise Tax Board with  
36 respect to the cut-off date, the date a return is received, and whether  
37 a return has been timely filed for purposes of this subdivision may  
38 not be reviewed in any administrative or judicial proceeding.

39 (B) Any disallowance of a credit claimed due to a determination  
40 under this subdivision, including the application of the limitation

1 specified in paragraph (1), shall be treated as a mathematical error  
2 appearing on the return. Any amount of tax resulting from such  
3 disallowance may be assessed by the Franchise Tax Board in the  
4 same manner as provided by Section 19051.

5 (4) The Franchise Tax Board shall periodically provide notice  
6 on its *Internet* Web site with respect to the amount of credit under  
7 this section and Section 23623 claimed on timely filed original  
8 returns received by the Franchise Tax Board.

9 (h) (1) The Franchise Tax Board may prescribe rules,  
10 guidelines, or procedures necessary or appropriate to carry out the  
11 purposes of this section, including any guidelines regarding the  
12 limitation on total credits allowable under this section and Section  
13 23623 and guidelines necessary to avoid the application of  
14 paragraph (2) of subdivision (f) through split-ups, shell  
15 corporations, partnerships, tiered ownership structures, or  
16 otherwise.

17 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
18 Division 3 of Title 2 of the Government Code does not apply to  
19 any standard, criterion, procedure, determination, rule, notice, or  
20 guideline established or issued by the Franchise Tax Board  
21 pursuant to this section.

22 (i) This section shall remain in effect only until ~~December 1 of~~  
23 ~~the calendar year after the year of the cut-off date~~ *December 31,*  
24 *2014*, and as of that ~~December 1 date~~ is repealed.

25 SEC. 4. Section 23101 of the Revenue and Taxation Code is  
26 amended to read:

27 23101. (a) “Doing business” means actively engaging in any  
28 transaction for the purpose of financial or pecuniary gain or profit.

29 (b) For taxable years beginning on or after January 1, 2011, a  
30 taxpayer is doing business in this state for a taxable year if any of  
31 the following conditions has been satisfied:

32 (1) The taxpayer is organized or commercially domiciled in this  
33 state.

34 (2) Sales, as defined in subdivision (e) or (f) of Section 25120  
35 as applicable for the taxable year, of the taxpayer in this state  
36 exceed the lesser of five hundred thousand dollars (\$500,000) or  
37 25 percent of the taxpayer’s total sales. For purposes of this  
38 paragraph, sales of the taxpayer include sales by an agent or  
39 independent contractor of the taxpayer. For purposes of this  
40 paragraph, sales in this state shall be determined using the rules

1 for assigning sales under ~~Section~~ *Sections* 25135 and subdivision  
2 ~~(b) of Section 25136~~, and the regulations thereunder, as modified  
3 by regulations under Section 25137.

4 (3) The real property and tangible personal property of the  
5 taxpayer in this state exceed the lesser of fifty thousand dollars  
6 (\$50,000) or 25 percent of the taxpayer's total real property and  
7 tangible personal property. The value of real and tangible personal  
8 property and the determination of whether property is in this state  
9 shall be determined using the rules contained in Sections 25129  
10 to 25131, inclusive, and the regulations thereunder, as modified  
11 by regulation under Section 25137.

12 (4) The amount paid in this state by the taxpayer for  
13 compensation, as defined in subdivision (c) of Section 25120,  
14 exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent  
15 of the total compensation paid by the taxpayer. Compensation in  
16 this state shall be determined using the rules for assigning payroll  
17 contained in Section 25133 and the regulations thereunder, as  
18 modified by regulations under Section 25137.

19 (c) (1) The Franchise Tax Board shall annually revise the  
20 amounts in paragraphs (2), (3), and (4) of subdivision (b) in  
21 accordance with subdivision (h) of Section 17041.

22 (2) For purposes of the adjustment required by paragraph (1),  
23 subdivision (h) of Section 17041 shall be applied by substituting  
24 "2012" in lieu of "1988."

25 (d) The sales, property, and payroll of the taxpayer include the  
26 taxpayer's pro rata or distributive share of pass-through entities.  
27 For purposes of this subdivision, "pass-through entities" means a  
28 partnership or an "S" corporation.

29 SEC. 5. Section 23623 of the Revenue and Taxation Code, as  
30 added by Section 8 of Chapter 10 of the Third Extraordinary  
31 Session of the Statutes of 2009, is repealed.

32 ~~23623. (a) For each taxable year beginning on or after January~~  
33 ~~1, 2009, there shall be allowed as a credit against the "tax," as~~  
34 ~~defined in Section 23036, three thousand dollars (\$3,000) for each~~  
35 ~~net increase in qualified full-time employees, as specified in~~  
36 ~~subdivision (e), hired during the taxable year by a qualified~~  
37 ~~employer.~~

38 ~~(b) For purposes of this section:~~

39 ~~(1) "Acquired" includes any gift, inheritance, transfer incident~~  
40 ~~to divorce, or any other transfer, whether or not for consideration.~~

1     ~~(2) “Qualified full-time employee” means:~~

2     ~~(A) A qualified employee who was paid qualified wages during~~  
3 ~~the taxable year by the qualified employer for services of not less~~  
4 ~~than an average of 35 hours per week.~~

5     ~~(B) A qualified employee who was a salaried employee and~~  
6 ~~was paid compensation during the taxable year for full-time~~  
7 ~~employment, within the meaning of Section 515 of the Labor Code,~~  
8 ~~by the qualified employer.~~

9     ~~(3) A “qualified employee” shall not include any of the~~  
10 ~~following:~~

11     ~~(A) An employee certified as a qualified employee in an~~  
12 ~~enterprise zone designated in accordance with Chapter 12.8~~  
13 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~  
14 ~~Government Code.~~

15     ~~(B) An employee certified as a qualified disadvantaged~~  
16 ~~individual in a manufacturing enhancement area designated in~~  
17 ~~accordance with Section 7073.8 of the Government Code.~~

18     ~~(C) An employee certified as a qualified employee in a targeted~~  
19 ~~tax area designated in accordance with Section 7097 of the~~  
20 ~~Government Code.~~

21     ~~(D) An employee certified as a qualified disadvantaged~~  
22 ~~individual or a qualified displaced employee in a local agency~~  
23 ~~military base recovery area (LAMBRA) designated in accordance~~  
24 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~  
25 ~~7 of Title 1 of the Government Code.~~

26     ~~(E) An employee whose wages are included in calculating any~~  
27 ~~other credit allowed under this part.~~

28     ~~(4) “Qualified employer” means a taxpayer that, as of the last~~  
29 ~~day of the preceding taxable year, employed a total of 20 or fewer~~  
30 ~~employees.~~

31     ~~(5) “Qualified wages” means wages subject to Division 6~~  
32 ~~(commencing with Section 13000) of the Unemployment Insurance~~  
33 ~~Code.~~

34     ~~(6) “Annual full-time equivalent” means either of the following:~~

35     ~~(A) In the case of a full-time employee paid hourly qualified~~  
36 ~~wages, “annual full-time equivalent” means the total number of~~  
37 ~~hours worked for the taxpayer by the employee (not to exceed~~  
38 ~~2,000 hours per employee) divided by 2,000.~~

1 ~~(B) In the case of a salaried full-time employee, “annual~~  
2 ~~full-time equivalent” means the total number of weeks worked for~~  
3 ~~the taxpayer by the employee divided by 52.~~

4 ~~(e) The net increase in qualified full-time employees of a~~  
5 ~~qualified employer shall be determined as provided by this~~  
6 ~~subdivision:~~

7 ~~(1) (A) The net increase in qualified full-time employees shall~~  
8 ~~be determined on an annual full-time equivalent basis by~~  
9 ~~subtracting from the amount determined in subparagraph (C) the~~  
10 ~~amount determined in subparagraph (B).~~

11 ~~(B) The total number of qualified full-time employees employed~~  
12 ~~in the preceding taxable year by the taxpayer and by any trade or~~  
13 ~~business acquired by the taxpayer during the current taxable year.~~

14 ~~(C) The total number of full-time employees employed in the~~  
15 ~~current taxable year by the taxpayer and by any trade or business~~  
16 ~~acquired during the current taxable year.~~

17 ~~(2) For taxpayers who first commence doing business in this~~  
18 ~~state during the taxable year, the number of full-time employees~~  
19 ~~for the immediately preceding prior taxable year shall be zero.~~

20 ~~(d) In the case where the credit allowed by this section exceeds~~  
21 ~~the “tax,” the excess may be carried over to reduce the “tax” in~~  
22 ~~the following year, and succeeding seven years if necessary, until~~  
23 ~~the credit is exhausted.~~

24 ~~(e) Any deduction otherwise allowed under this part for qualified~~  
25 ~~wages shall not be reduced by the amount of the credit allowed~~  
26 ~~under this section.~~

27 ~~(f) For purposes of this section:~~

28 ~~(1) All employees of the trades or businesses that are treated as~~  
29 ~~related under either Section 267, 318, or 707 of the Internal~~  
30 ~~Revenue Code shall be treated as employed by a single taxpayer.~~

31 ~~(2) In determining whether the taxpayer has first commenced~~  
32 ~~doing business in this state during the taxable year, the provisions~~  
33 ~~of subdivision (f) of Section 17276, without application of~~  
34 ~~paragraph (7) of that subdivision, shall apply.~~

35 ~~(g) (1) (A) Credit under this section and Section 17053.80 shall~~  
36 ~~be allowed only for credits claimed on timely filed original returns~~  
37 ~~received by the Franchise Tax Board on or before the cut-off date~~  
38 ~~established by the Franchise Tax Board.~~

39 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~  
40 ~~last day of the calendar quarter within which the Franchise Tax~~

1 Board estimates it will have received timely filed original returns  
2 claiming credits under this section and Section 17053.80 that  
3 cumulatively total four hundred million dollars (\$400,000,000)  
4 for all taxable years.

5 (2) The date a return is received shall be determined by the  
6 Franchise Tax Board.

7 (3) (A) The determinations of the Franchise Tax Board with  
8 respect to the cut-off date, the date a return is received, and whether  
9 a return has been timely filed for purposes of this subdivision may  
10 not be reviewed in any administrative or judicial proceeding.

11 (B) Any disallowance of a credit claimed due to a determination  
12 under this subdivision, including the application of the limitation  
13 specified in paragraph (1), shall be treated as a mathematical error  
14 appearing on the return. Any amount of tax resulting from such  
15 disallowance may be assessed by the Franchise Tax Board in the  
16 same manner as provided by Section 19051.

17 (4) The Franchise Tax Board shall periodically provide notice  
18 on its Web site with respect to the amount of credit under this  
19 section and Section 17053.80 claimed on timely filed original  
20 returns received by the Franchise Tax Board.

21 (h) (1) The Franchise Tax Board may prescribe rules, guidelines  
22 or procedures necessary or appropriate to carry out the purposes  
23 of this section, including any guidelines regarding the limitation  
24 on total credits allowable under this section and Section 17053.80  
25 and guidelines necessary to avoid the application of paragraph (2)  
26 of subdivision (f) through split-ups, shell corporations, partnerships,  
27 tiered ownership structures, or otherwise.

28 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
29 Division 3 of Title 2 of the Government Code does not apply to  
30 any standard, criterion, procedure, determination, rule, notice, or  
31 guideline established or issued by the Franchise Tax Board  
32 pursuant to this section.

33 (i) This section shall remain in effect only until December 1 of  
34 the calendar year after the year of the cut-off date, and as of that  
35 December 1 is repealed.

36 SEC. 6. Section 23623 of the Revenue and Taxation Code, as  
37 added by Section 8 of Chapter 17 of the Third Extraordinary  
38 Session of the Statutes of 2009, is amended to read:

39 23623. (a) For each taxable year beginning on or after January  
40 1, 2009, there *There* shall be allowed as a credit against the "tax,"

1 as defined in Section 23036, ~~three thousand dollars (\$3,000)~~ the  
2 amount specified in paragraph (1) or (2) for each net increase in  
3 qualified full-time employees, as specified in subdivision (c), hired  
4 during the taxable year by a qualified employer.

5 (1) For each taxable year beginning on or after January 1,  
6 2009, and before January 1, 2012, the credit shall be equal to  
7 three thousand dollars (\$3,000).

8 (2) For each taxable year beginning on or after January 1,  
9 2012, and before January 1, 2014, the credit shall be equal to four  
10 thousand dollars (\$4,000).

11 (b) For purposes of this section:

12 (1) “Acquired” includes any gift, inheritance, transfer incident  
13 to divorce, or any other transfer, whether or not for consideration.

14 (2) “Qualified full-time employee” means:

15 (A) A qualified employee who was paid qualified wages during  
16 the taxable year by the qualified employer for services of not less  
17 than an average of 35 hours per week.

18 (B) A qualified employee who was a salaried employee and  
19 was paid compensation during the taxable year for full-time  
20 employment, within the meaning of Section 515 of the Labor Code,  
21 by the qualified employer.

22 (3) A “qualified employee” shall not include any of the  
23 following:

24 (A) An employee certified as a qualified employee in an  
25 enterprise zone designated in accordance with Chapter 12.8  
26 (commencing with Section 7070) of Division 7 of Title 1 of the  
27 Government Code.

28 (B) An employee certified as a qualified disadvantaged  
29 individual in a manufacturing enhancement area designated in  
30 accordance with Section 7073.8 of the Government Code.

31 (C) An employee certified as a qualified employee in a targeted  
32 tax area designated in accordance with Section 7097 of the  
33 Government Code.

34 (D) An employee certified as a qualified disadvantaged  
35 individual or a qualified displaced employee in a local agency  
36 military base recovery area (LAMBRA) designated in accordance  
37 with Chapter 12.97 (commencing with Section 7105) of Division  
38 7 of Title 1 of the Government Code.

39 (E) An employee whose wages are included in calculating any  
40 other credit allowed under this part.

(4) “Qualified employer” means ~~a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.~~

(A) *For taxable years beginning on or after January 1, 2009, and before January 1, 2012, a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.*

(B) *For taxable years beginning on or after January 1, 2012, and before January 1, 2014, a taxpayer that, as of the last day of the preceding taxable year, employed a total of 50 or fewer employees.*

(5) “Qualified wages” means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

(6) “Annual full-time equivalent” means either of the following:

(A) In the case of a full-time employee paid hourly qualified wages, “annual full-time equivalent” means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.

(B) In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the taxpayer by the employee divided by 52.

(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:

(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).

(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.

(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.

(2) For taxpayers ~~who~~ *that* first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.

(d) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and *the* succeeding seven years if necessary, until the credit is exhausted.

(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.

(f) For purposes of this section:

(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.

(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision—(f) (g) of Section—17276 24416.20, without application of paragraph (7) of that subdivision, shall apply.

(g) (1) (A) Credit under this section and Section 17053.80 shall be allowed only for credits claimed on *a* timely filed original ~~returns~~ *return* received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board.

(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 17053.80 that cumulatively total four hundred million dollars (\$400,000,000) for all taxable years.

(2) The date a return is received shall be determined by the Franchise Tax Board.

(3) (A) The determinations of the Franchise Tax Board with respect to the cut-off date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding.

(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.

(4) The Franchise Tax Board shall periodically provide notice on its *Internet* Web site with respect to the amount of credit under

1 this section and Section 17053.80 claimed on timely filed original  
2 returns received by the Franchise Tax Board.

3 (h) (1) The Franchise Tax Board may prescribe rules,  
4 guidelines, or procedures necessary or appropriate to carry out the  
5 purposes of this section, including any guidelines regarding the  
6 limitation on total credits allowable under this section and Section  
7 17053.80 and guidelines necessary to avoid the application of  
8 paragraph (2) of subdivision (f) through split-ups, shell  
9 corporations, partnerships, tiered ownership structures, or  
10 otherwise.

11 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
12 Division 3 of Title 2 of the Government Code does not apply to  
13 any standard, criterion, procedure, determination, rule, notice, or  
14 guideline established or issued by the Franchise Tax Board  
15 pursuant to this section.

16 (i) This section shall remain in effect only until ~~December 1 of~~  
17 ~~the calendar year after the year of the cut-off date~~ *December 31,*  
18 *2014*, and as of that ~~December 1~~ *date* is repealed.

19 SEC. 7. Section 25128 of the Revenue and Taxation Code is  
20 amended to read:

21 25128. (a) *(1) Notwithstanding Section 38006, for taxable*  
22 *years beginning before January 1, 2012, all business income shall*  
23 *be apportioned to this state by multiplying the business income*  
24 *by a fraction, the numerator of which is the property factor plus*  
25 *the payroll factor plus twice the sales factor, and the denominator*  
26 *of which is four, except as provided in subdivision (b) or (c).*

27 *(2) Notwithstanding Section 38006, for taxable years beginning*  
28 *on or after January 1, 2012, all business income of an apportioning*  
29 *trade or business described in paragraph (1) shall be apportioned*  
30 *to this state by multiplying the business income by the sales factor;*  
31 *unless the trade or business meets the criteria of subdivision (b)*  
32 *or makes an election to apportion its income in accordance with*  
33 *Section 25128.7.*

34 (b) If an apportioning trade or business derives more than 50  
35 percent of its “gross business receipts” from conducting one or  
36 more qualified business activities, *as defined in subdivision (c)*,  
37 all business income of the apportioning trade or business shall be  
38 apportioned to this state by multiplying business income by a  
39 fraction, the numerator of which is the property factor plus the

1 payroll factor plus the sales factor, and the denominator of which  
2 is three.

3 (c) For purposes of this section, ~~a “qualified business activity”~~  
4 ~~means the following:~~

5 ~~(1) An agricultural business activity.~~

6 ~~(2) An extractive business activity.~~

7 ~~(3) A savings and loan activity.~~

8 ~~(4) A banking or financial business activity.~~

9 ~~(d) For purposes of this section:~~

10 (1) *“Agricultural business activity” means any activity relating*  
11 *to any stock, dairy, poultry, fruit, furbearing animal, or truck farm,*  
12 *plantation, ranch, nursery, or range. “Agricultural business*  
13 *activity” also includes any activity relating to cultivating the soil*  
14 *or raising or harvesting any agricultural or horticultural*  
15 *commodity, including, but not limited to, the raising, shearing,*  
16 *feeding, caring for, training, or management of animals on a farm*  
17 *as well as the handling, drying, packing, grading, or storing on a*  
18 *farm of any agricultural or horticultural commodity in its*  
19 *unmanufactured state, but only if the owner, tenant, or operator*  
20 *of the farm regularly produces more than one-half of the*  
21 *commodity so treated.*

22 (2) *“Apportioning trade or business” means a distinct trade or*  
23 *business whose business income is required to be apportioned*  
24 *under Sections 25101 and 25120, limited, if applicable, by Section*  
25 *25110, using the same denominator for each of the applicable*  
26 *payroll, property, and sales factors.*

27 (3) *“Banking or financial business activity” means any activity*  
28 *attributable to dealings in money or moneyed capital in substantial*  
29 *competition with the business of national banks.*

30 (4) *“Extractive business activity” means any activity relating*  
31 *to the production, refining, or processing of oil, natural gas, or*  
32 *mineral ore.*

33 ~~(1)~~

34 (5) *“Gross business receipts” means gross receipts described in*  
35 *subdivision (e) or (f) of Section 25120 (other than gross receipts*  
36 *from sales or other transactions within an apportioning trade or*  
37 *business between members of a group of corporations whose*  
38 *income and apportionment factors are required to be included in*  
39 *a combined report under Section 25101, limited, if applicable, by*

1 Section 25110), whether or not the receipts are excluded from the  
2 sales factor by operation of Section 25137.

3 ~~(2) “Agricultural business activity” means activities relating to~~  
4 ~~any stock, dairy, poultry, fruit, furbearing animal, or truck farm,~~  
5 ~~plantation, ranch, nursery, or range. “Agricultural business activity”~~  
6 ~~also includes activities relating to cultivating the soil or raising or~~  
7 ~~harvesting any agricultural or horticultural commodity, including,~~  
8 ~~but not limited to, the raising, shearing, feeding, caring for, training,~~  
9 ~~or management of animals on a farm as well as the handling,~~  
10 ~~drying, packing, grading, or storing on a farm any agricultural or~~  
11 ~~horticultural commodity in its unmanufactured state, but only if~~  
12 ~~the owner, tenant, or operator of the farm regularly produces more~~  
13 ~~than one-half of the commodity so treated.~~

14 ~~(3) “Extractive business activity” means activities relating to~~  
15 ~~the production, refining, or processing of oil, natural gas, or mineral~~  
16 ~~ore.~~

17 ~~(4)~~

18 ~~(6) “Qualified business activity” means any of the following:~~

19 ~~(A) An agricultural business activity.~~

20 ~~(B) An extractive business activity.~~

21 ~~(C) A savings and loan activity.~~

22 ~~(D) A banking or financial business activity.~~

23 ~~(7) “Savings and loan activity” means any activities activity~~  
24 ~~performed by savings and loan associations or savings banks which~~  
25 ~~have been chartered by federal or state law.~~

26 ~~(5) “Banking or financial business activity” means activities~~  
27 ~~attributable to dealings in money or moneyed capital in substantial~~  
28 ~~competition with the business of national banks.~~

29 ~~(6) “Apportioning trade or business” means a distinct trade or~~  
30 ~~business whose business income is required to be apportioned~~  
31 ~~under Sections 25101 and 25120, limited, if applicable, by Section~~  
32 ~~25110, using the same denominator for each of the applicable~~  
33 ~~payroll, property, and sales factors.~~

34 ~~(7) Paragraph (4) of subdivision (c) shall apply only if the~~  
35 ~~Franchise Tax Board adopts the Proposed Multistate Tax~~  
36 ~~Commission Formula for the Uniform Apportionment of Net~~  
37 ~~Income from Financial Institutions, or its substantial equivalent,~~  
38 ~~and shall become operative upon the same operative date as the~~  
39 ~~adopted formula.~~

40 ~~(8)~~

(d) In any case where the income and apportionment factors of two or more savings associations or corporations are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110, both of the following shall apply:

(A)

(1) The application of the more than 50 percent test of subdivision (b) shall be made with respect to the “gross business receipts” of the entire apportioning trade or business of the group.

(B)

(2) The entire business income of the group shall be apportioned in accordance with either subdivision (a) or (b), or ~~subdivision (b) of Section 25128.5 or 25128.7~~, as applicable.

*(e) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 2012.*

SEC. 8. Section 25128.5 of the Revenue and Taxation Code is amended to read:

25128.5. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, *and before January 1, 2012*, any apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, may make an irrevocable annual election on an original timely filed return, in the manner and form prescribed by the Franchise Tax Board to apportion its income in accordance with this section, and not in accordance with Section 25128.

(b) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, *and before January 1, 2012*, all business income of an apportioning trade or business making an election described in subdivision (a) shall be apportioned to this state by multiplying the business income by the sales factor.

(c) The Franchise Tax Board is authorized to issue regulations necessary or appropriate regarding the making of an election under this section, including regulations that are consistent with rules prescribed for making an election under Section 25113.

*(d) This section shall not apply to taxable years beginning on or after January 1, 2012, and as of December 1, 2012, is repealed.*

SEC. 9. Section 25128.7 is added to the Revenue and Taxation Code, to read:

25128.7. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2012, any apportioning trade or

1 business, other than an apportioning trade or business described  
2 in subdivision (b) of Section 25128, may make an irrevocable  
3 annual election on an original timely filed return, in the manner  
4 and form prescribed by the Franchise Tax Board, to apportion its  
5 income in accordance with this section, and not in accordance with  
6 Section 25128, if the “tax,” as defined in Section 23036 before the  
7 application of any credits, using this section to apportion its  
8 business income, is not less than the “tax,” as defined in Section  
9 23036 before the application of any credits, using paragraph (2)  
10 of subdivision (a) of Section 25128 to apportion its business  
11 income.

12 (b) Notwithstanding Section 38006, for taxable years beginning  
13 on or after January 1, 2012, all business income of an apportioning  
14 trade or business making an election under subdivision (a) shall  
15 be apportioned to this state by multiplying the business income  
16 by a fraction, the numerator of which is the property factor plus  
17 the payroll factor plus twice the sales factor, and the denominator  
18 of which is four.

19 (c) The Franchise Tax Board is authorized to issue regulations  
20 necessary or appropriate regarding the making of an election under  
21 this section, including regulations that are consistent with rules  
22 prescribed for making an election under Section 25113.

23 SEC. 10. Section 25136 of the Revenue and Taxation Code is  
24 amended to read:

25 25136. (a) For taxable years beginning before January 1, ~~2011~~  
26 ~~2012~~, and for taxable years beginning on or after January 1, 2011,  
27 *and before January 1, 2012*, for which Section 25128.5 is operative  
28 and an election under subdivision (a) of Section 25128.5 has not  
29 been made, sales, other than sales of tangible personal property,  
30 are in this state if:

31 (1) The income-producing activity is performed in this state; or

32 (2) The income-producing activity is performed both in and  
33 outside this state and a greater proportion of the income-producing  
34 activity is performed in this state than in any other state, based on  
35 costs of performance.

36 (3) This subdivision shall apply, and subdivision (b) shall not  
37 apply, for any taxable year beginning on or after January 1, 2011,  
38 for which Section 25128.5 is not operative for any taxpayer subject  
39 to the tax imposed under this part.

1 (b) For taxable years beginning on or after January 1, 2011, *and*  
2 *before January 1, 2012:*

3 (1) Sales from services are in this state to the extent the  
4 purchaser of the service received the benefit of the service in this  
5 state.

6 (2) Sales from intangible property are in this state to the extent  
7 the property is used in this state. In the case of marketable  
8 securities, sales are in this state if the customer is in this state.

9 (3) Sales from the sale, lease, rental, or licensing of real property  
10 are in this state if the real property is located in this state.

11 (4) Sales from the rental, lease, or licensing of tangible personal  
12 property are in this state if the property is located in this state.

13 (5) (A) If Section 25128.5 is operative, then this subdivision  
14 shall apply in lieu of subdivision (a) for any taxable year for which  
15 an election has been made under subdivision (a) of Section  
16 25128.5.

17 (B) If Section 25128.5 is not operative, then this subdivision  
18 shall not apply and subdivision (a) shall apply for any taxpayer  
19 subject to the tax imposed under this part.

20 (C) Notwithstanding subparagraphs (A) or (B), this subdivision  
21 shall apply for purposes of paragraph (2) of subdivision (b) of  
22 Section 23101.

23 (c) The Franchise Tax Board may prescribe those regulations  
24 as necessary or appropriate to carry out the purposes of subdivision  
25 (b).

26 (d) *This section shall not apply to taxable years beginning on*  
27 *or after January 1, 2012, and as of December 1, 2012, is repealed.*

28 SEC. 11. Section 25136.1 is added to the Revenue and Taxation  
29 Code, to read:

30 25136.1. (a) Notwithstanding Section 38006, for taxable years  
31 beginning on or after January 1, 2012, sales are in this state if:

32 (1) Sales from services are in this state to the extent the  
33 purchaser of the service received the benefit of the services in this  
34 state.

35 (2) Sales from intangible property are in this state to the extent  
36 the property is used in this state. In the case of marketable  
37 securities, sales are in this state if the customer is in this state.

38 (3) Sales from the sale, lease, rental, or licensing of real property  
39 are in this state if the real property is located in this state.

(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

(b) The Franchise Tax Board may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

SEC. 12. Section 25136.2 is added to the Revenue and Taxation Code, to read:

25136.2. (a) For taxable years beginning on or after January 1, 2012, a qualified taxpayer that apportions its business income under Section 25128 shall apply the following provisions:

(1) Notwithstanding Section 25137, qualified sales assigned to this state shall be equal to 50 percent of the amount of qualified sales that would be assigned to this state pursuant to Section 25136.1 but for the application of this section. The remaining 50 percent shall not be assigned to this state.

(2) All other sales shall be assigned pursuant to Section 25136.1.

(b) For purposes of this section:

(1) "Qualified taxpayer" means a member, as defined in paragraph (10) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations, as in effect on the effective date of the act adding this section, of a combined reporting group that is also a qualified group.

(2) "Qualified group" means a combined reporting group, as defined in paragraph (3) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations, as in effect on the effective date of the act adding this section, that satisfies the following conditions:

(A) Has satisfied the minimum investment requirement for the taxable year.

(B) For the combined reporting group's taxable year beginning in calendar year 2006, the combined reporting group derived more than 50 percent of its United States network gross business receipts from the operation of one or more cable systems.

(C) For purposes of satisfying the requirements of subparagraph (B), the following rules shall apply:

(i) If a member of the combined reporting group for the taxable year was not a member of the same combined reporting group for the taxable year beginning in calendar year 2006, the gross business receipts of that nonincluded member shall be included in determining the combined reporting group's gross business receipts for its taxable year beginning in calendar year 2006 as if the

1 nonincluded member were a member of the combined reporting  
2 group for the taxable year beginning in calendar year 2006.

3 (ii) The gross business receipts shall include the gross business  
4 receipts of a qualified partnership, but only to the extent of a  
5 member's interest in the partnership.

6 (3) "Cable system" and "network" shall have the same meaning  
7 as defined in Section 5830 of the Public Utilities Code, as in effect  
8 on the effective date of the act adding this section. "Network  
9 services" means video, cable, voice, or data services.

10 (4) "Gross business receipts" means gross receipts defined in  
11 paragraph (2) of subdivision (f) of Section 25120 (other than gross  
12 receipts from sales or other transactions between or among  
13 members of a combined reporting group, limited, if applicable, by  
14 Section 25110).

15 (5) "Minimum investment requirement" means qualified  
16 expenditures of not less than two hundred fifty million dollars  
17 (\$250,000,000) by a combined reporting group during the calendar  
18 year that includes the beginning of the taxable year.

19 (6) "Qualified expenditures" means any combination of  
20 expenditures attributable to this state for tangible property, payroll,  
21 services, franchise fees, or any intangible property distribution or  
22 other rights, paid or incurred by or on behalf of a member of a  
23 combined reporting group.

24 (A) An expenditure for other than tangible property shall be  
25 attributable to this state if the member of the combined reporting  
26 group received the benefit of the purchase or expenditure in this  
27 state.

28 (B) A purchase of or expenditure for tangible property shall be  
29 attributable to this state if the property is placed in service in this  
30 state.

31 (C) Qualified expenditures shall include expenditures by a  
32 combined reporting group for property or services purchased, used,  
33 or rendered by independent contractors in this state.

34 (D) Qualified expenditures shall also include expenditures by  
35 a qualified partnership, but only to the extent of the member's  
36 interest in the partnership.

37 (7) "Qualified partnership" means a partnership if the  
38 partnership's income and apportionment factors are included in  
39 the income and apportionment factors of a member of the combined

1 reporting group, but only to the extent of the member's interest in  
2 the partnership.

3 (8) "Qualified sales" means gross business receipts from the  
4 provision of any network services, other than gross business  
5 receipts from the sale or rental of customer premises equipment.  
6 "Qualified sales" shall include qualified sales by a qualified  
7 partnership, but only to the extent of a member's interest in the  
8 partnership.

9 (c) The rules in this section with respect to qualified sales by a  
10 qualified partnership are intended to be consistent with the rules  
11 for partnerships under paragraph (3) of subdivision (f) of Section  
12 25137-1 of Title 18 of the California Code of Regulations.

13 SEC. 13. This act addresses the fiscal emergency declared and  
14 reaffirmed by the Governor by proclamation on January 20, 2011,  
15 pursuant to subdivision (f) of Section 10 of Article IV of the  
16 California Constitution.

17 SEC. 14. This act provides for a tax levy within the meaning  
18 of Article IV of the Constitution and shall go into immediate effect.

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